

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL MOI, an individual,

Plaintiff,

V.

CHIHULY STUDIO, INC., a Washington corporation; DALE CHIHULY, individually and as a married person; LESLIE CHIHULY, individually and as a married person.

Defendants.

No. 17-853

NOTICE OF REMOVAL

TO: THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

PLEASE TAKE NOTICE that Defendants Chihuly, Inc.,¹ Dale Chihuly, and Leslie

Chihuly (collectively, “Chihuly” or “Defendants”) hereby remove this action to this Court from the Superior Court of Washington in and for King County (“King County Superior Court”) pursuant to 28 U.S.C. §§ 1441(a) and 1454(a) because this Court has exclusive and original jurisdiction over this matter. In support of this Notice, Defendants respectfully state the following.

¹ Plaintiff named “Chihuly Studio, Inc.” as a defendant. Chihuly Studio is a registered trade name for Chihuly, Inc.

I. STATE COURT ACTION

This is a civil action in which Plaintiff Michael Moi (“Plaintiff”) makes claims arising under the Copyright Act, 17 U.S.C. § 101, *et seq.*, as well as related state law claims. *See* Ex. A (Compl. ¶¶ 4.1-4.5). On May 15, 2017, Plaintiff served, but did not file, the Complaint. Declaration of Harry H. Schneider, Jr. in Support of Defendants’ Notice of Removal ¶ 2 & Ex. 1 (acceptance of service) (“Schneider Decl.”). Chihuly filed the Complaint in King County Superior Court on May 30, 2017. The matter is pending in King County Superior Court as Cause No. 17-2-14150-0. A copy of the Complaint, including a jury demand, is attached hereto as **Exhibit A**.

II. GROUNDS FOR REMOVAL

This action is removable under 28 U.S.C. § 1454(a) because this Court has exclusive federal jurisdiction over Plaintiff's copyright claims under 28 U.S.C. § 1338(a). This Court has supplemental jurisdiction over Plaintiff's related state law claim under 28 U.S.C. § 1367(a). This action is also removable under 28 U.S.C. § 1441(a) because this Court would have had original jurisdiction over Plaintiff's claims if Plaintiff had elected to file the action initially in federal court.

A. Exclusive Federal Jurisdiction

This Court has exclusive federal jurisdiction over Plaintiff’s copyright claims. *See* 28 U.S.C. § 1338 (“The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to . . . copyrights[.] No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to . . . copyrights.”). In his Complaint, as his third cause of action, Plaintiff seeks a declaration that Plaintiff and Chihuly co-authored certain “artistic works” and that these works are “joint works” under the Copyright Act, 17 U.S.C. § 101, *et seq.* Ex. A (Compl. ¶ 4.3). Additionally, as his fifth cause of action, Plaintiff seeks injunctive relief under the Visual Artists Rights Act, 17 U.S.C. § 106A. Ex. A (Compl. ¶ 4.5). This action is removable. *See* 28 U.S.C. § 1454(a) (“A civil action in which any party

1 asserts a claim for relief arising under any Act of Congress relating to . . . copyrights may be
2 removed to the district court of the United States for the district and division embracing the place
3 where the action is pending."); 28 U.S.C. § 1441(a).

4 **B. Supplemental Jurisdiction**

5 Under 28 U.S.C. § 1367(a), Plaintiff's state law claims are within this Court's
6 supplemental jurisdiction if they form part of the same case or controversy, meaning the claims
7 share a common nucleus of operative facts. *See also United Mine Workers v. Gibbs*, 383 U.S.
8 715, 725 (1966) (claims arise from the same case or controversy if they arise from "a common
9 nucleus of operative facts"). This Court has supplemental jurisdiction over Plaintiff's state law
10 claims because those claims rely on the same nucleus of operative facts as the federal claims:
11 that Plaintiff allegedly created certain artistic works with Mr. Chihuly. *See* Ex. A (Compl. ¶¶
12 4.1, 4.2, 4.4).

13 **III. INTRA-DISTRICT ASSIGNMENT AND VENUE**

14 This Court is the district court of the United States for the district and division embracing
15 the place where the state court action is currently pending, and is therefore the appropriate court
16 for removal pursuant to 28 U.S.C. § 1441(a). This action is being removed to the Seattle
17 Division because it is pending in King County Superior Court and Plaintiff and Defendants
18 reside in King County. *See* W.D. Wash. Local Civil Rule 3(e)(1).

19 Moreover, venue is proper pursuant to 28 U.S.C. § 1391, because Plaintiff and
20 Defendants reside in the Western District of Washington, and the material events giving rise to
21 the claims alleged in the Complaint occurred therein. Ex. A (Compl. ¶¶ 1.1-1.4).

22 **IV. CONSENT OF ALL DEFENDANTS**

23 Defendants are represented by the undersigned, and all consent to removal.

V. REMOVAL IS TIMELY

Defendants accepted service of the Complaint on May 15, 2017. Schneider Decl. ¶ 2 & Ex. 1. This Notice or Removal is therefore timely filed within the 30 days allowed under 28 U.S.C. § 1446(b).

VI. NOTICE TO STATE COURT AND TRANSFER OF RELEVANT MATERIALS

Attached to this Notice is a true copy of the Complaint which Plaintiff served on Defendants and which Defendants subsequently filed in King County Superior Court. *See* Ex. A. Copies of all other process, pleadings, and orders served on Defendants or filed in the state court are attached to the separately filed Verification of State Court Records. Proof of notice to Plaintiff and the Clerk of the King County Superior Court will also be filed separately.

WHEREFORE, Chihuly requests that this Court consider this Notice of Removal as provided by law governing the removal of cases to this Court, that this Court take such steps as are necessary to achieve the removal of this matter to this Court from King County Superior Court, and that this Court will make such other orders as may be appropriate to effect the preparation and filing of a true record in this cause of all proceedings that may have been had in the state court action.

DATED: June 2, 2017

s/ Harry H. Schneider, Jr., WSBA No. 9404

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Attorneys for Defendants Chihuly, Inc., Dale Chihuly, and Leslie Chihuly

CERTIFICATE OF SERVICE

I certify that on June 2, 2017, I served the foregoing on the following attorney(s) of record of record by the method(s) indicated:

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Via U.S. Mail, 1st Class, Postage Prepaid
 Via Hand Delivery
 Via Overnight Delivery
 Via Facsimile
 Via Email

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 2nd day of June, 2017.

s/ Harry H. Schneider, Jr., WSBA No. 9404
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